



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

May 15, 2003

Ms. Linda L. Sjogren  
Assistant City Attorney  
City of San Angelo  
P.O. Box 1751  
San Angelo, Texas 76902

OR2003-3284

Dear Ms. Sjogren:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181120.

The San Angelo Police Department (the "department") received a request for any pictures and police reports from all officers on the scene of a particular incident. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We note that you have not submitted any photographs or videotape from the scene of the incident, nor does your request for a decision address this information. We assume that the department has released this information to the extent that it exists. If it has not, it must do so at this time. *See* Gov't Code §§ 552.021, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under circumstances). We have considered the exceptions you claim and have reviewed the submitted information.

You argue that autopsy photographs contained in the submitted information are governed by section 11 of article 49.25 of the Code of Criminal Procedure. Section 11 provides:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . The records are subject to required public

disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Code Crim. Proc. art. 49.25, § 11. We conclude that you must withhold the autopsy photographs in this case.

You further claim that the names of SWAT Team members contained within the submitted information are excepted from disclosure under section 552.108. However, such information is considered not to be excepted from disclosure under section 552.108, as it is basic front page offense and arrest information. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 at 3-4 (1976). We note, however, that this office has held that information may be withheld from disclosure under section 552.101 in conjunction with the common-law right to privacy upon a showing of certain "special circumstances."<sup>1</sup> See Open Records Decision No. 169 (1977). As you point out, in Open Records Letter No. 2002-5836 (2002), this office allowed the City of San Angelo to withhold the names of SWAT Team members under section 552.101 due to the existence of certain special circumstances. You contend that special circumstances exist that allow the information to be withheld in this instance as well. Therefore, we will address this argument under section 552.101.

This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* Based on the information you provided and our review of the information at issue, we conclude that you have not established the presence of special circumstances sufficient to justify withholding the names of SWAT Team members in this instance. Therefore, the department may not withhold such information under section 552.101 and common-law privacy.

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<sup>1</sup> Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected under the doctrine of common-law privacy. Common-law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Finally, we note that section 552.130 of the Government Code excepts from disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Thus, the license plate and vehicle identification numbers belonging to a living individual must be withheld under section 552.130. We note that this provision was enacted to protect the privacy of an individual, and therefore, the protection extinguishes upon the individual's death. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979). This conclusion is consistent with prior decisions of this office, which held that exceptions of the Public Information Act that only protect a person's privacy interest do not survive the death of that person. *See Attorney General Opinion H-917* (1976) (common-law privacy under sections 552.101 and 552.102 lapses on person's death); Open Records Decision Nos. 536 (1989) (section 552.119 does not except peace officer's photograph after officer's death), 524 (1989) (section 552.114 does not except student records after student's death). Thus, the department may not withhold the deceased individual's driver's license and motor vehicle information.

In summary, you must withhold the autopsy photographs under article 49.25, section 11 of the Code of Criminal Procedure. The license plate and vehicle identification numbers belonging to a living individual must be withheld under section 552.130. The remaining requested information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one

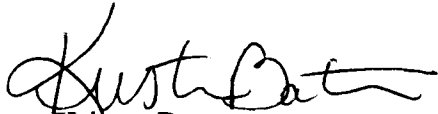
of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/lmt

Ref: ID# 181120

Enc. Submitted documents

c: Mr. Richard J. Hamilton  
55 Sage Road  
San Angelo, Texas 76903  
(w/o enclosures)